GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute :—Industrial Dispute between the workmen and the management of M/s R.Z. Malu Saw Mills, Filter Bed Road, Near Nehru Gunj, Gulbarga.

Award of the Labour Court, Hubli Published.

Read the following papers :

(1) Letter No. 797/70-71 dated 5th December 1970 from Sri W. K. Kulkarni, Presiding Officer, Labour Court, Hubli.

BEFORE THE LABOUR COURT, HUBLI.

Ref : (ID) LCH Claim No. 8/1970.

Camp : Gulbarga.

Presiding Officer : W. K. Kulkarni, ***B.A.*** (Hons) ***LLB.***

Dated 26th November 1970.

Claimant.	*Respondent.*
Sri Shivaji Dolare, his cause sponsored by the President General Workers, Union, Gulbarga :	The Management of M/s, R Z Malu Saw Mills' Filter Bed Road, Near Nehru Gunj, Gulbarga.

1. This is a reference made by the State Government under Section 10 (1) (c) of the Industrial Disputes Act 1947, which will be referred to, hereinafter as the Act.

2. The claimant worker has filed a claim statement. Since some of the details were not given in the claim statement, he has produced in this Court a true copy of the application given by him to the Conciliation Officer. It is marked as Ex. W-2. The case of the claimant is that he joined the service of the Respondent Saw Mills called Malu Saw Mills on 5th February 1967 on a monthly salary of Rs. 135. He worked there till 4th January

1968 on which day an accident took place in the Mill and he got a serious injury on his wrist. That he was admitted to the Hospital where he remained as indoor patient for 20 days. After discharge, he approached the proprietor of the Respondent Mills and requested him to take him on duty. But Proprietor refused to take him on duty. Subsequently he requested the proprietor now and then. But to no effect. Then he approached the Labour Officer for Conciliation. The Conciliation Proceedings failed and thereafter the State Government has made this reference and the following points of dispute have been referred to this Court.

(1) Is the Management of M/s R. Z. Malu Saw Mills Filter bed-Road, Near Nehru Gunj, Gulbarga, justified in refusal of work to Sri Shivaji Dolare, workman?

(2) If not, what relief is the said workman entitled to?

3. The proprietor of the Respondent mill has filed a written statement in which he contends as following:—

4 He says that the petitioner joined his saw Millas a worker on 13th April 1967 and worked there till 3rd November 1967. Thereafter the claimant himself left the job and did not come to duty, though the mill required his services. That the proprietor of the Mill never removed the claimant from the services. On the other hand an advance of Rs. 129-33 taken by the claimant is still due to the Respondent. Thus the claimant is not entitled to retrenchment compensation or to one month's salary in lieu of notice. That the claimant never worked overtime. So, he can not claim overtime allowance. That weekly holidays were given to the claimant. That the Respondent has closed the Saw Mill with effect from 25th October 1969, due to unavoidable circumstances beyond his control. For these reasons the claim should be rejected.

5. The claimant is examined as WW 1 and the proprietor of the Mill Rama Narayan, Malu is examined as MW-1. He has also examined one witness Narayana Rao MW-2

6. The first question that falls to be decided whether the claimant himself left the job or his services were terminated by the Respondent. From the evidence I am inclined to hold that the Respondent terminated his services and the worker did not voluntarily leave the job. He says there was an accident in the Mill and a serious injury to his wrist was caused and he was in the Hospital. No doubt he has not produced any medical

cerificate. But there is no reason to dis-believe his evidence on the point. If he had voluntarily left the job, there was no reason for him to approach the Labour Officer for Conciliation. His application to the Labour Officer is dated 8th September 1969. The Respondent has also filed his written statement before the Laborur Officer and a true copy of the same is filed by the Respondent himself and marked Ex. M-3 Then a true copy of the Proceedings before the Labour Officer (Conciliation Officer) is at Ex. W-1 All these records undoubtedly show that the petitioner was trying to go back for duty in the Respondent's Saw Mill. If he had voluntarily left the job, there was no reason for him to go through all these proceedings. MW-1 Ram Narayana who is proprietor of the Mill stated that the petitioner left the work and the Mill did not remove him. No written notice was issued to the claimant by the Respondent to come back on duty. I am satisfied from the evidence that the Respondent terminated the services of the claimant. The Respondent has produced some of his accounts books. Ex. M-1 is the signature book, Ex. M-2 is the ledger book. In the ledger book there is an entry that an amount of Rs. 129-33 is due from the claimant. The Respondent did not State in his evidence as to whether he had taken any acknowledgement from the worker for this amount being due. It is true that the claimant admitted that he took an advance of Rs 100 when he joined service under Respondent. But we do not know whether it was later adjusted towards his salary. We are not much concerned whether any amount was due from the claimant. Of course it was argued for the Respondent that if any amount was due from the claimant, his services would not be terminated by the Respondent. But then I am not inclined to give weight to these accounts of Respondent. The Saw Mill being a trade it had to be registered under the Mysore Shops and Commercial Establishment Act, 1961. A true copy of the Proceedings before the Conciliation Officer Ex. W-1 would show that the Respondent admitted before the Conciliation Officer that he had not maintained any Registers under the Mysore Shops and Commercial Establishments Act, 1961. In this Court the Respondent MW-1 stated that he had registered his Saw Mill under the said Act and he had maintained all the Registers under the Act. But he adds that they are now lost. I do not believe him. It appears that he did not at all register his establishment under the said Act and did not maintain any Registers. If he had done so, he would have produced the relevant records before this Court and entries in them would have been acceptable to this Court. Before Conciliation Officer he

admitted that he had not maintained any Registers under that Act. Now he ventures to say that he had maintained the Registers and they are lost. It is hard to believe all this. In the absence of these registers, I am not prepared to give any weight to the account books produced by the Respondent. Under the statute namely Mysore Shops and Commercial Establishment Act 1961, he was bound to maintain certain registers. The payment of wages Act 1936 has been made applicable to the Establishments registered under Mysore Shops and Commercial Establishment Act 1961 *Vide* Notification issued by the State Government No. PLM 80 LSG 64 Dated 19th March 1965. Thus under Payment of Wages Act 1936, the Respondent ought to have issued the wage slip. But he has not done any such thing and evaded the statutory provisions.

Then the Respondent says that he has sold away his Mill about Dipavali of 1969, and so he cannot now re-instate the claimant. The claimant also says in his evidence that he does not want any job under the Respondent. Under these circumstances the question of re-instatement does not arise, and the petitioner cannot be reinstated. However, as there was wrongful termination by the Respondent the claimant is entitled to the compensation and I next come to that question. in the claim petition the claimant has claimed in all Rs. 4,855. The first item is one month's notice pay of Rs. 135. Since the Respondent did not issue any notice to the claimant, the latter is entitled to this amount. The claimant says that he joined the service of the Mill on 5th February 1967 and worked for 11 months till 4th January 1968. I accept this statement. If it was otherwise the Respondent should have produced the attendance Register of the Mill. Then the second claim made by the claimant is Rs. 4,320 as back wages, namely wages from 4th January 1968 till 24th August 1970 the date of filing the claim statement. I accept the case of the Respondent that he has sold away the Mill about 11 months back *i e.* in Dipavali 1969. Since the claimant himself now says that he is not willing to go on duty if Respondent gives him work, I do not think, should be given any wages for the period after his services were terminated. The Mill was closed in October 1969 and thereafter the claimant could not have been employed. Even for the period prior to October 1969 and after termination I do not think that wages by way of compensation should be allowed to the claimant, since he himself now says that he is not willing to serve under the Respondent. I therefore reject the second item of the claim.

8. Then the third item is leave salary of Rs. 90 under Sec. 15 of the Mysore Shops and Commercial Establishments Act 1961 the claimant was entitled to 1 day leave for every completed service of 20 days. He has worked for 11 months. So he was entitled to 16 days Earned leave with wages. The Respondent has not at all maintained the leave Register and so the case of the petitioner that he was not given any leave has to be accepted. So he is entitled to 16 days leave salary which comes to Rs. 70.

9. Then the fourth item of claim is service compensation of Rs. 90 under Section 25 F of the I. D. Act. The claimant is entitled to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months. Thus the claimant is entitled to 15 days salary. It comes to Rs. 67-50 Then the fifth claim relates to overtime allowance. The Respondent has stated that whenever the claimant worked overtime, he has been paid overtime allowance. The claimant's evidence on this point is exaggerated. He says that on every day during all the 11 months he worked from 6 A. M. to 10-00 P. M. It is hard to believe this. In the absence of satisfactory evidence as to how many hour overtime work was done by the claimant, I reject this item of the claim.

10. Then the last claimt is of Rs 100 for weekly holidays. The Respondent has stated that every week he has allowed the holidays to the claimant. The claimant kept quiet all the 11 months. I think he must have been given weekly holidays. Otherwise he would have protested then only. So I reject this item of claim. The result is the claimant is entitled to recover Rs. 272-50 in all from the Respondent. Hence my award.

AWARD

11. Since the claimant does not wish to be re-instated and also because the Saw Mill of the Respondent is sold away, the petitioner can not be re-instated. However the Respondent is liable to pay to the claimant Rs. 272-50 as compensation for wrongful termination of the claimant's services. And I direct that the Respondent should pay the said amount to the claimant. There will be no order as to costs, of this proceeding.

W. K. KULKARNI,
Presiding Officer,
Labour Court, Hubli